

2005 DRAFTING REQUEST

Bill

Received: **12/08/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Informed consent by minors for treatment for mental illness

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 01/16/2005	kfollett 01/17/2005		_____			S&L
/P1			jfrantze 01/18/2005	_____	lnorthro 01/18/2005 mbarman 01/19/2005		S&L
/P2	dkennedy 02/25/2005	kfollett 03/02/2005	jfrantze 03/02/2005	_____	sbasford 03/02/2005		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	dkennedy 05/03/2005	kfollett 05/04/2005	pgreensl 05/04/2005	_____	lnorthro 05/04/2005	lnorthro 05/20/2005	

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/P2	dkennedy 02/25/2005	kfollett 03/02/2005 11 kgf 5/4	jfrantze 03/02/2005 p8	5/4 p8/r	sbasford 03/02/2005		

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e-mail only
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requested
by Roessler's
office

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/?	dkennedy	1/17	1/17	1/18			

FE Sent For:

<END>

Kennedy, Debora

From: Sappenfield, Anne
Sent: Wednesday, December 08, 2004 1:51 PM
To: Kennedy, Debora
Cc: Rose, Laura
Subject: redraft of SB 387

Hi Debora!

Senator Roessler would like to redraft 2003 Senate Bill 387 with the following changes:

- Specify that any mental health treatment of a minor child must be "medically necessary".
- Allow minors age 14 and older to consent to voluntary outpatient or inpatient treatment and psychotropic drugs. If the minor refuses to consent to such treatment or medication in writing, the minor's parent may consent to the treatment or medication.
- Modify s. 51.13 (4) to provide for a review in the case of an admission that the parent consented to as a result of the minor's refusal of treatment. — No, this deals with outpt. m.h. treatment; and s. 13 (4)(d) + (g) apply
- If a minor requests to be discharged under s. 51.13 (7) (b), the parent may consent to continuing the treatment, in which case the minor would not be discharged if the treatment is still medically necessary. — appropriate?
- Delete SEC. 21 of the bill to retain current law relating to consent to release records.

Thanks, Debora. Laura will be back on Monday. You can call me if you have questions before then.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council Staff

what if
par/g is
unavailable?

From Laura Rose 1/12/05:

The term "medically necessary" is to be used only w/ respect to situation in wh/ the minor refuses to consent to treatment or drugs or continuing treatment or drugs.

Problem: does this replace "treatment consistent w/ the needs" of the minor or "appropriate to the minor's needs"? Argument? How? What does it mean in this context?

2003 SENATE BILL 387

January 14, 2004 - Introduced by Senators ROESSLER, A. LASEE and COWLES, cosponsored by Representatives JENSEN, HUNDERTMARK, LADWIG, KRAWCZYK, HINES, GUNDERSON, F. LASEE, WASSERMAN, TOWNSEND, SERATTI, PETROWSKI and TAYLOR. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to repeal** 51.13 (1) (b) and 51.13 (1) (c) 2.; and **to amend** 51.13 (1) (a),
2 51.13 (1) (b), 51.13 (1) (c) 1., 51.13 (1) (c) 3., 51.13 (2) (a), 51.13 (2) (b), 51.13 (2)
3 (d), 51.13 (3) (b), 51.13 (3) (c), 51.13 (4) (d), 51.13 (4) (g) (intro.), 51.13 (4) (g) 1.,
4 51.13 (6) (a), 51.13 (7) (title), 51.13 (7) (a), 51.13 (7) (b), 51.13 (7) (c), 51.14 (3)
5 (a), 51.20 (16) (a), 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (b) 2., 51.35 (3) (a), 51.35
6 (3) (b), 51.35 (3) (g) and 51.61 (6) of the statutes; **relating to:** eliminating the
7 distinction between a minor under 14 years of age and a minor 14 years of age
8 or older with regard to informed consent for treatment for mental illness,
9 transfer, discharge, and access to records.

Analysis by the Legislative Reference Bureau

Currently, the mental health laws distinguish between minors under 14 years of age and minors 14 years of age or older with regard to giving informed consent for outpatient treatment for mental illness or developmental disability; voluntary admission to and discharge from an inpatient facility for treatment and rehabilitation of mental illness or developmental disability; reexamination under, or modification or cancellation of, an involuntary commitment order for treatment for mental illness or developmental disability; transfer from a juvenile secured

SENATE BILL 387

correctional facility to an inpatient facility for treatment for mental illness or developmental disability; access and consent to the release of court records and treatment records; and informed consent for medication and treatment. No distinction exists between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for alcoholism or drug abuse. This bill eliminates the distinction between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for mental illness under the mental health laws.

Specifically, under current law, subject to certain exceptions, before a minor 14 years of age or older may receive outpatient treatment or general medication and treatment for mental illness or developmental disability, the written, informed consent of both the minor and the minor's parent or guardian is required. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, provide his or her written, informed consent, in addition to that of his or her parent or guardian, before he or she may receive outpatient treatment or general medication and treatment for mental illness.

Under current law, subject to certain exceptions, before a minor 14 years of age or older may be admitted voluntarily to an inpatient facility for treatment for mental illness or developmental disability, both the minor and the minor's parent who has legal custody of the minor or the minor's guardian must execute an application for voluntary admission to the facility. This bill eliminates the requirement that a minor 14 years of age or older execute the application for voluntary admission to an inpatient facility, along with his or her parent or guardian, before the minor may be admitted to the facility for treatment of mental illness.

Under current law, if a minor 14 years of age or older wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the children's code (juvenile court) for approval of the admission. This bill permits a minor under 14 years of age to petition the juvenile court for approval of his or her admission to an inpatient facility if the minor's parent or guardian refuses to execute the application for admission or cannot be found.

Under current law, a minor 14 years of age or older who is voluntarily admitted to an inpatient facility for treatment for mental illness or developmental disability may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age, however, may be discharged on his or her request only after a hearing before the juvenile court to determine the continued appropriateness of the admission. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, who has been voluntarily admitted to an inpatient facility for treatment of mental illness be discharged within 48 hours after his or her request and instead requires the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law. The bill retains the requirement

51.61
(6)51.14
(3)(a)51.13
(1)(a),
(b),51.13
(1)(a),
(b),
(2)
(a)51.13
(1)(c)
1.,
2.,
3.51.13
(2)(b),
(d),
(3)
(b),
(c),
(4)(d),
(a)
(intro.),
1.,
(7)(b),
(c)

SENATE BILL 387

for discharge from an inpatient facility of a requesting minor 14 years of age or older who was voluntarily admitted for treatment of developmental disability.

Under current law, a minor 14 years of age or older who has been involuntarily committed for treatment for mental illness or developmental disability may, on his or her own petition or on the petition of a guardian, relative, friend, or person providing treatment under the commitment order, petition the juvenile court for an order that his or her mental condition be reexamined or for an order modifying or canceling his or her commitment. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, to file his or her own petition for such a reexamination, modification, or cancellation of the minor's treatment for mental illness.

Under current law, a minor may be transferred from a juvenile secured correctional facility to an inpatient facility for treatment for mental illness or developmental disability if the juvenile court finds that the transfer is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older, that the transfer is voluntary on the part of the minor. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, consent to being transferred from a juvenile correctional facility to an inpatient facility for treatment for mental illness. Under the bill, only the minor's parent or guardian need consent, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or older may have access to his or her court records and treatment records for treatment for mental illness or developmental disability on the same basis as an adult, but a minor under 14 years of age may have access to his or her court records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a judge and may have access to his or her treatment records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a staff member of the treatment facility. This bill limits access by a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found and except for a voluntarily admitted developmentally disabled minor, to his or her court records or treatment records except in the presence of a person whose presence is required under current law for a minor under 14 years of age.

Under current law, subject to certain exceptions, confidential information in the court records or treatment records for treatment for mental illness or developmental disability of a minor 14 years of age or older may be released on the consent of the minor without the consent of the minor's parent or guardian or a person in place of a parent. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, to consent to the release of confidential information in his or her court records or treatment records for treatment for mental illness without the consent of his or her parent or guardian or a person in place of a parent.

14 years of age or older

51.13
(4)(d),
(g)(intro)
1. ?

51.20
(16)(a)

51.35
(3)(b),
(g)

51.30
(5)(b)
1, 2

51.30
(5)(a)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3671/1dn

DAK:kg:pg

November 27, 2001

To Senator Roessler:

Please note that I drafted the following provisions somewhat differently than in 1999 Senate Bill 212:

1. Under current law, a minor who is aged 14 or older and who has been admitted to an inpatient facility for treatment for mental illness or developmental disability and a minor who has been voluntarily admitted when no parent is available or if a parent refuses to consent may request a discharge and be discharged within 48 hours after the request. This bill eliminates the right of the minor aged 14 or older to request and receive discharge. The question is, should the right to discharge also be eliminated for the minor who is voluntarily admitted with no available parent or with a parent who refuses consent? Section 51.13 (3) (b) and (c), stats., both deal with the requirement that the director of an inpatient treatment facility inform a minor of the minor's right to request and receive a discharge from the facility. I drafted them to require that a minor who is voluntarily admitted when no parent is available or if a parent refuses consent be informed of his or her right to request a discharge. Because of the those drafting decisions, I also did not repeal s. 51.13 (7) (b), stats., but instead preserved the right of a minor, who is voluntarily admitted when no parent is available or if a parent refuses to consent, to request and receive a discharge. I also added "if available" to the requirement that the parent or guardian of such a minor be notified (otherwise, the requirement might prove to be an impossibility). In s. 51.30 (5) (a), stats. I specified that a minor, who is voluntarily admitted when no parent is available or if a parent refuses to consent, may consent to the release of confidential information in court or treatment records without the consent of his or her parent, guardian, or person in the place of a parent. Lastly, I thought that such a minor would retain the right to consent to or refuse treatment under s. 51.61 (6), since no parent would apparently be available to perform that function. This decision seems consistent with current law under s. 51.35 (3) (a), stats. These drafting decisions are based on the assumption that such a minor exhibits quite an amount of autonomy, i.e., in checking himself or herself into an inpatient treatment facility. If my assumption is incorrect or if there are other circumstances in which such a minor is voluntarily admitted, perhaps you would want to distinguish among these types of minors. Alternatively, you may disagree generally with the decisions that I have made and may not want this type of minor to be able to discharge himself or herself; if that is the case, I can redraft accordingly, but I'm

somewhat concerned that such a minor would have to rely on the director of the facility to make a request for his or her discharge, because a parent or guardian would be absent.

2. In s. 51.13 (7) (c), current law as affected by the biennial budget act requires a hearing on the continued appropriateness of the minor's admission upon request, if no hearing on the minor's admission has been held within 120 days after receipt of the request. (The word "after" was substituted for "of" in the biennial budget act.) However, the same paragraph *also* requires that a hearing be held within 14 days after the request unless the parties agree to a longer period. I believe that "after" is incorrect for the first requirement and that, instead, it should have been changed to "before"; if that change is made, then a hearing is required if no hearing has been held within the previous 120 days, and the hearing must be held 14 days after the request is received. I have changed s. 51.13 (7) (c), stats., accordingly. Please review.

3. The amendment to s. 51.30 (5) (b) 1., stats., in 1999 Senate Bill 212 eliminated language that restricted access by the parent, guardian, or person in the place of a parent of a developmentally disabled minor to the minor's court or treatment records if the minor who is aged 14 or older filed a written objection. The amendment, then, allowed record access to such a parent, guardian, or person "at all times," whereas other language in that same subdivision allows the same access to parents, guardians, and persons in the place of a parent of *other* minors "as provided to subject individuals under this section." However, not all "subject individuals" have access, particularly minors (see s. 51.30 (5) (b) 2.). This provision, then, could be interpreted to restrict access to parents, etc., in the same way that a minor's access is restricted under s. 51.30 (5) (b) 2., stats., which is a nonsensical result. Therefore, I amended the provision to except s. 51.30 (5) (b) 2., stats. Please review.

Please don't hesitate to call if you need a redraft or if I can otherwise help with this bill.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

What's going on in ch. 51:

① 51.61 (6) - written, informed consent of pt. reqd. except for minor 14 or older receiving services for alcoholism or drug ab. or minor under 14 receiving services for mi, dd, alch, or drug abuse. Written, informed consent of ^(any) minor's parent or guard, except under order under:

a) 51.13 (1)(c)1 - minor 14 or older wants admission to inpt. facil but par or g. refuses or can't be found or there is no parent w/ legal custody -
Standards under 51.13(4)(d) it must approve if approp under 51.13(4)(d) stds.

b) 51.13 (1)(c)2 - same for minor under 14 - par or g. can't be found + no par. w/ legal cust.

* c) 51.14 (3)(h) - minor refuses to provide consent or p/g refuses, m.h. officer can order outpt. ment hlt treatment

d) 51.14 (4)(g) - ct. can order outpt m.h. treatment if minor or p/g refuses consent

Written, inf. consent of minor ^{aged 14} and p/g for mi. or dd. services

Refusal of minor or p/g for admission to inpt treatment facil reviewable under 51.13 (1)(c)1. ← **WRONG**

Refusal " " " for outpt m.h. treatment reviewable under 51.14

② 51.13 (1)(c) - See above

③ 51.14 (3)(h) - See above

④ 51.14 (4)(g) - " "

⑤ 51.13 (4)(d) - review by ct. of admission by minor aged 14 or older to inpatient treatment facility under 51.13(1)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1179/?ins

.....

The way 51.61 should look

INSERT 17-21

SECTION 1. 51.61 (6) of the statutes is renumbered 51.61 (6) (intro.) and amended to read:

51.61 (6) (intro.) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian

~~to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14. all of the following apply:~~

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4034zl; 2001 a. 104.

SECTION 2. 51.61 (6) (a) of the statutes is created to read:

51.61 (6) (a) If the minor is under 14 years of age, for the receipt of services for mental illness, developmental disability, alcoholism, or drug abuse, the written, informed consent of the minor's parent or guardian is required, except as provided under s. 51.13 (1) (c) 2.

SECTION 3. 51.61 (6) (b) of the statutes is created to read:

51.61 (6) (b) If the minor is 14 years of age or older:

1. For the receipt of services for developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required, except for services in an inpatient facility, as provided under s. 51.13 (1) (c) 1.

2. For the receipt of services for alcoholism or drug abuse, the written, informed consent of the minor's parent or guardian is required, except for services in an inpatient facility, as provided under s. 51.13 (1) (c) 1.

3. For the receipt of services for mental illness, the written informed consent of the minor and of the minor's parent or guardian is required, except for all of the following:

a. A refusal of the minor or the minor's parent or guardian to provide written, informed consent for inpatient treatment for mental illness is reviewable under s. 51.13 (1) (c) 1. and (4) (d).

4. A refusal of the minor or the minor's parent or guardian to provide written, informed consent for outpatient treatment for mental illness is reviewable under s. 51.14 (3) (h) and (4) (g).

medically necessary

v. "need"

See 51.13(4)(d) - "in need" + "therapy or treatment
appropriat to minor's needs" + wpt care is "least
restrict therapy or treatment consist. w/
minor's needs"

See 51.13(4)(a) 3, 4, 5.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1179/2dn

DAK.....

Date

To Senator Roessler:

This bill is in preliminary form because there are numerous issues that may need review and resolution. Your request for a redraft of 2003 Senate Bill 387 had several parts. I have dealt with the request as follows:

1. "Specify that any mental health treatment of a minor child must be "medically necessary". I have not added this requirement because I'm not sure what "medically necessary" means in this context (it is undefined in other statutes in which it is used), and because I'm unsure how it should be used in conjunction with the standards for inpatient and outpatient therapy or treatment in current law that require that the therapy or treatment be "appropriate to a minor's needs" (ss. 51.13 (4) (d) and (g) (intro.) and 51.14 (4) (a) 3. and 4. and (g) 3., stats., or "consistent with the minor's needs (s. 51.13 (1) (e), stats., for inpatient care) and "least restrictive" (ss. 51.13 (1) (e), (4) (a) 5., (d), (g) (intro.), and (6) (b) and 51.14 (3) (b) 4. and (h) 3., stats.) Did you want to replace these standards, or is it thought that medical necessity is different from appropriateness or consistency with the minor's needs and the least restrictive treatment?

2. "Allow minors age 14 and older to consent to voluntary outpatient or inpatient treatment and psychotropic drugs. If the minor refuses to consent to such treatment or medication in writing, the minor's parent may consent to the treatment or medication." and "Modify s. 51.13 (4) to provide for a review in the case of an admission that the parent consented to as a result of the minor's refusal of treatment." Under current law, under s. 51.61 (6), stats., the refusal of either a minor aged 14 or older or his or her parent or guardian to consent to inpatient or outpatient treatment is reviewable. (Section 51.61 (6), stats., has a mistake in it in this regard—it refers to review of a minor's refusal under s. 51.12 (1) (c) 1., stats., which instead deals with the situation where a parent or guardian refuses or cannot be found or there is no parent with legal custody and a minor wants to be admitted to an inpatient facility.) The review of refusals, by the minor or by the parent or guardian, then, is under s. 51.13 (1) (c) 1. and (4) (d), stats., for inpatient treatment, and under s. 51.14 (3) (h) and (4) (g), stats., for outpatient treatment. I have redone s. 51.61 (6) to structure it in a clearer fashion, fix its current mistake, and more clearly provide for the review of a refusal of either the parent or guardian or the minor for inpatient or outpatient treatment. Okay?

51.13 ✓

3. "If a minor requests to be discharged under s. 51.13 (7) (b), the parent may consent to continuing the treatment, in which case the minor would not be discharged if the treatment is still medically necessary." I have done this but, again, have used the current standards of appropriateness and least restrictiveness, rather than medical necessity, pending resolution of Drafter's Note #1., above. I also have made an exception to this limitation on the right of discharge for minors who are voluntarily admitted under s. 51.13 (1) (c) 1. or 2. (the parent or guardian refused to execute the application for admission or can't be found or there is no parent with legal custody); I also changed s. ~~51.12~~ (2) (b) to refer to s. 51.13 (7) (b), as revised in the bill, for all minors and eliminated provisions about notice that are redundant to s. 51.13 (3), stats.

4. "Delete SEC. 21 of the bill to retain current law relating to consent to release records." I have done this. Did you also want for me to delete SECTION 23 (the amendment to s. 51.30 (5) (b) 2.)? At this point, I have reworded it, but only to clarify current law.

* In addition, I have added reference to alcoholism and drug abuse to s. 51.13 (7) (a), stats.; these seemed to have been omitted inadvertently, since the paragraph still provides for emergency commitment, which is used under s. 51.45 only for alcoholism. I also changed ss. 51.14 (3) (a), 51.20 (16) (a), and 51.30 (5) (b) 2., stats., from the way in which they had been amended in 2003 Senate Bill 387. Please review.

I would be happy to provide you with any further assistance you need with respect to this draft.

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2005-2006

By 1/19/04, please

2003-2004 LEGISLATURE

LRB-3619/1

DAK:wj:jjf

D-NOTE

1179/P1

Kf

2003 SENATE BILL 387

January 14, 2004 - Introduced by Senators ROESSLER, A. LASEE and COWLES, cosponsored by Representatives JENSEN, HUNDERTMARK, LADWIG, KRAWCZYK, HINES, GUNDERSON, F. LASEE, WASSERMAN, TOWNSEND, SERATTI, PETROWSKI and TAYLOR. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

Regen

1 **AN ACT to repeal** 51.13 (1) (b) and 51.13 (1) (c) 2.; and **to amend** 51.13 (1) (a),
2 51.13 (1) (b), 51.13 (1) (c) 1., 51.13 (1) (c) 3., 51.13 (2) (a), 51.13 (2) (b), 51.13 (2)
3 (d), 51.13 (3) (b), 51.13 (3) (c), 51.13 (4) (d), 51.13 (4) (g) (intro.), 51.13 (4) (g) 1.,
4 51.13 (6) (a), 51.13 (7) (title), 51.13 (7) (a), 51.13 (7) (b), 51.13 (7) (c), 51.14 (3)
5 (a), 51.20 (16) (a), 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (b) 2., 51.35 (3) (a), 51.35
6 (3) (b), 51.35 (3) (g) and 51.61 (6) of the statutes; **relating to:** ~~eliminating the~~
7 ~~distinction between a minor under 14 years of age and a minor 14 years of age~~
8 ~~or older with regard to informed consent for treatment for mental illness,~~
9 ~~transfer, discharge, and access to records.~~ *minors for*

Analysis by the Legislative Reference Bureau

Currently, the mental health laws distinguish between minors under 14 years of age and minors 14 years of age or older with regard to giving informed consent for outpatient treatment for mental illness or developmental disability; voluntary admission to and discharge from an inpatient facility for treatment and rehabilitation of mental illness or developmental disability; reexamination under, or modification or cancellation of, an involuntary commitment order for treatment for mental illness or developmental disability; transfer from a juvenile secured

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or a minor whose parent or guardian refused to execute an admission application or cannot be found who has petitioned successfully for admission

correctional facility to an inpatient facility for treatment for mental illness or developmental disability; access and consent to the release of court records and treatment records; and informed consent for medication and treatment. No distinction exists between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for alcoholism or drug abuse. ~~This bill eliminates the distinction between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for mental illness under the mental health laws.~~

Specifically, under current law, subject to certain exceptions, before a minor 14 years of age or older may receive outpatient treatment or general medication and treatment for mental illness or developmental disability, the written, informed consent of both the minor and the minor's parent or guardian is required. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, provide his or her written, informed consent, in addition to that of his or her parent or guardian, before he or she may receive outpatient treatment or general medication and treatment for mental illness.

Under current law, subject to certain exceptions, before a minor 14 years of age or older may be admitted voluntarily to an inpatient facility for treatment for mental illness or developmental disability, both the minor and the minor's parent who has legal custody of the minor or the minor's guardian must execute an application for voluntary admission to the facility. This bill eliminates the requirement that a minor 14 years of age or older execute the application for voluntary admission to an inpatient facility, along with his or her parent or guardian, before the minor may be admitted to the facility for treatment of mental illness.

no # Under current law, if a minor ~~14 years of age or older~~ wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the ~~children's code (juvenile court)~~ for approval of the admission. This bill permits a minor under 14 years of age to petition the juvenile court for approval of his or her admission to an inpatient facility if the minor's parent or guardian refuses to execute the application for admission or cannot be found.

Under current law, a minor 14 years of age or older who is voluntarily admitted to an inpatient facility for treatment for mental illness or developmental disability may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age, however, may be discharged on his or her request only after a hearing before the juvenile court to determine the continued appropriateness of the admission. ~~This bill eliminates the requirement that a minor 14 years of age or older except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, who has been voluntarily admitted to an inpatient facility for treatment of mental illness be discharged within 48 hours after his or her request and instead requires the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law. The bill retains the requirement~~

and the minor request discharge in writing. If the parent or guardian refuses to request discharge and the facility director agrees, in writing, that the minor's treatment is appropriate and least restrictive,

requires that both the parent or guardian of

the minor may not be discharged, but must petition

if his or her parent or guardian also requests discharge or

or a minor who is voluntarily admitted for treatment of alcoholism or drug abuse

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for discharge from an inpatient facility of a requesting minor 14 years of age or older who was voluntarily admitted for treatment of developmental disability.

Under current law, a minor 14 years of age or older who has been involuntarily committed for treatment for mental illness or developmental disability may, on his or her own petition or on the petition of a guardian, relative, friend, or person providing treatment under the commitment order, petition the juvenile court for an order that his or her mental condition be reexamined or for an order modifying or canceling his or her commitment. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, to file his or her own petition for such a reexamination, modification, or cancellation of the minor's treatment for mental illness.

Under current law, a minor may be transferred from a juvenile secured correctional facility to an inpatient facility for treatment for mental illness or developmental disability if the juvenile court finds that the transfer is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older, that the transfer is voluntary on the part of the minor. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, consent to being transferred from a juvenile correctional facility to an inpatient facility for treatment for mental illness. Under the bill, only the minor's parent or guardian need consent, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or older may have access to his or her court records and treatment records for treatment for mental illness or developmental disability on the same basis as an adult, but a minor under 14 years of age may have access to his or her court records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a judge and may have access to his or her treatment records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a staff member of the treatment facility. This bill limits access by a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found and except for a voluntarily admitted developmentally disabled minor, to his or her court records or treatment records except in the presence of a person whose presence is required under current law for a minor under 14 years of age.

Under current law, subject to certain exceptions, confidential information in the court records or treatment records for treatment for mental illness or developmental disability of a minor 14 years of age or older may be released on the consent of the minor without the consent of the minor's parent or guardian or a person in place of a parent. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, to consent to the release of confidential information in his or her court records or treatment records for treatment for mental illness without the consent of his or her parent or guardian or a person in place of a parent.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 51.13 (1) (a) of the statutes is amended to read:

51.13 (1) (a) Except as provided in par. (c) and s. 51.45 (2m), the application for voluntary admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, alcoholism, or drug abuse and the application for voluntary admission of a minor who is under 14 years of age to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for voluntary admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

SECTION 2. 51.13 (1) (b) of the statutes is amended to read:

51.13 (1) (b) The application for voluntary admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for ~~mental illness or developmental disability~~ shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1.

SECTION 3. 51.13 (1) (c) 1. of the statutes is amended to read:

51.13 (1) (c) 1. If a minor ~~14 years of age or older~~ wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian

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1 refuses to execute the application for admission or cannot be found, or if there is no
2 parent with legal custody, the minor or a person acting on the minor's behalf may
3 petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the
4 county of residence of the parent or guardian for approval of the admission. A copy
5 of the petition and a notice of hearing shall be served upon the parent or guardian
6 at his or her last-known address. If, after a hearing, the court determines that the
7 consent of the parent or guardian is being unreasonably withheld, that the parent
8 or guardian cannot be found, or that there is no parent with legal custody, and that
9 the admission is proper under the standards prescribed in sub. (4) (d), the court shall
10 approve the minor's admission without the consent of the parent or guardian.

11 **SECTION 4.** 51.13 (1) (c) 2. of the statutes is repealed.

12 **SECTION 5.** 51.13 (1) (c) 3. of the statutes is amended to read:

13 51.13 (1) (c) 3. The court may, at the minor's request, temporarily approve the
14 admission pending hearing on the petition. If a hearing is held under subd. 1. ~~or 2.~~,
15 no review or hearing under sub. (4) is required.

16 **SECTION 6.** 51.13 (2) (a) of the statutes is amended to read:

17 51.13 (2) (a) A minor may be admitted to an inpatient treatment facility
18 without complying with the requirements of this section if the admission does not
19 involve the department or a county department under s. 51.42 or 51.437, or a contract
20 between a treatment facility and the department or a county department. The
21 application for voluntary admission of a minor who is 14 years of age or older to an
22 inpatient treatment facility for the primary purpose of treatment for mental illness,
23 alcoholism, or drug abuse and the application for voluntary admission of a minor who
24 is under 14 years of age to an inpatient treatment facility for the primary purpose
25 of treatment for mental illness, developmental disability, alcoholism, or drug abuse

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SECTION 6

1 shall be executed by a parent who has legal custody of the minor or by the minor's
2 guardian. The application for voluntary admission of a minor who is 14 years of age
3 or older to an inpatient treatment facility for the primary purpose of treatment for
4 ~~mental illness or~~ developmental disability shall be executed by the minor and a
5 parent who has legal custody of the minor or the minor's guardian.

6 **SECTION 7.** 51.13 (2) (b) of the statutes is amended to read:

7 51.13 (2) (b) Notwithstanding par. (a), any minor who is 14 years of age or older
8 and who is admitted to an inpatient treatment facility for the primary purpose of
9 treatment of ~~mental illness or~~ developmental disability has the right to be
10 discharged within 48 hours after his or her request, as provided in sub. (7) (b). At
11 the time of admission, any minor who is 14 years of age or older and who is admitted
12 to an inpatient treatment facility for the primary purpose of treatment for ~~mental~~
13 ~~illness or~~ developmental disability, and the minor's parent or guardian, shall be
14 informed of this right orally and in writing by the director of the hospital or such
15 person's designee. This paragraph does not apply to individuals who receive services
16 in hospital emergency rooms.

17 **SECTION 8.** 51.13 (2) (d) of the statutes is amended to read:

18 51.13 (2) (d) Writing materials for use in requesting a discharge shall be made
19 available at all times to all minors who are 14 years of age or older and who are
20 admitted under this subsection for the primary purpose of treatment for ~~mental~~
21 ~~illness or~~ developmental disability. The staff of the facility shall assist such minors
22 in preparing or submitting requests for discharge.

23 **SECTION 9.** 51.13 (3) (b) of the statutes is amended to read:

24 51.13 (3) (b) Prior to or at admission, a ~~A~~ minor 14 years of age or older who has been admitted to an
25 inpatient treatment facility for the primary purpose of treatment for ~~mental illness~~

INSERT 6-22

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RESTORE TO PLAIN TEXT

as provided

under sub. (7)(b),

1 or developmental disability, a minor who is voluntarily admitted under sub. (1) (c)
2 1. or 2., and the minor's parent or guardian shall also be informed by the director or
3 his or her designee, both orally and in writing, in easily understandable language,
4 of the minor's right to request discharge and to be discharged within 48 hours of the
5 request if no petition or statement is filed for emergency detention, emergency
6 commitment, involuntary commitment, or protective placement, and the minor's
7 right to consent to or refuse treatment as provided in s. 51.61 (6).

8 SECTION 10. 51.13 (3) (c) of the statutes is amended to read:

9 51.13 (3) (c) Prior to or at admission, a minor 14 years of age or older, other than a minor specified under
10 par. (b), who has been admitted to an inpatient facility for the primary purpose of
11 treatment for mental illness, alcoholism, or drug abuse, a minor under 14 years of
12 age other than a minor specified under par. (b), who has been admitted to an inpatient treatment facility for the primary purpose
13 of treatment for mental illness, developmental disability, alcoholism, or drug abuse,
14 and the minor's parent or guardian shall also be informed by the director or his or
15 her designee, both orally and in writing, in easily understandable language, of the
16 right of the minor and parent or guardian to request the minor's discharge as provided in sub. or as limited by
17 (7) (b) and of the minor's right to a hearing to determine continued appropriateness
18 of the admission as provided in sub. (7) (c).

19 SECTION 11. 51.13 (4) (d) of the statutes is amended to read:

20 51.13 (4) (d) Within 5 days after the filing of the petition, the court assigned
21 to exercise jurisdiction under chs. 48 and 938 shall determine, based on the
22 allegations of the petition and accompanying documents, whether there is a prima
23 facie showing that the minor is in need of psychiatric services, or services for
24 developmental disability, alcoholism, or drug abuse, that the treatment facility offers
25 inpatient therapy or treatment that is appropriate to the minor's needs and that

SENATE BILL 387**SECTION 11**

1 inpatient care in the treatment facility is the least restrictive therapy or treatment
2 consistent with the needs of the minor, and, if the minor is 14 years of age or older
3 and has been admitted to the treatment facility for the primary purpose of treatment
4 for ~~mental illness or~~ developmental disability, whether the admission is voluntary
5 on the part of the minor. If such a showing is made, the court shall permit voluntary
6 admission. If the court is unable to make those determinations based on the petition
7 and accompanying documents, the court may dismiss the petition as provided in par.
8 (h); order additional information to be produced as necessary for the court to make
9 those determinations within 14 days after admission or application for admission,
10 whichever is sooner; or hold a hearing within 14 days after admission or application
11 for admission, whichever is sooner. If a notation of the minor's unwillingness
12 appears on the face of the petition, or if a hearing has been requested by the minor
13 or by the minor's counsel, parent, or guardian, the court shall hold a hearing to
14 review the admission within 14 days after admission or application for admission,
15 whichever is sooner, and shall appoint counsel to represent the minor if the minor
16 is unrepresented. If the court considers it necessary, the court shall also appoint a
17 guardian ad litem to represent the minor.

18 **SECTION 12.** 51.13 (4) (g) (intro.) of the statutes is amended to read:

19 51.13 (4) (g) (intro.) If the court finds that the minor is in need of psychiatric
20 services or services for developmental disability, alcoholism, or drug abuse in an
21 inpatient facility, that the inpatient facility to which the minor is admitted offers
22 therapy or treatment that is appropriate for the minor's needs and that is the least
23 restrictive therapy or treatment consistent with the minor's needs, and, in the case
24 of a minor 14 years of age or older who is being admitted for the primary purpose of
25 treatment for ~~mental illness or~~ developmental disability, that the application is

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1 voluntary on the part of the minor, the court shall permit voluntary admission. If the
2 court finds that the therapy or treatment in the inpatient facility to which the minor
3 is admitted is not appropriate or is not the least restrictive therapy or treatment
4 consistent with the minor's needs, the court may order placement in or transfer to
5 another more appropriate or less restrictive inpatient facility, except that the court
6 may not permit or order placement in or transfer to the northern or southern centers
7 for the developmentally disabled of a minor unless the department gives approval
8 for the placement or transfer, and if the order of the court is approved by all of the
9 following if applicable:

10 **SECTION 13.** 51.13 (4) (g) 1. of the statutes is amended to read:

11 51.13 (4) (g) 1. The minor if he or she is 14 years of age or older and is being
12 admitted for the primary purpose of treatment for ~~mental illness or developmental~~
13 ~~disability.~~

14 **SECTION 14.** 51.13 (6) (a) of the statutes is amended to read:

15 51.13 (6) (a) A minor may be admitted to an inpatient treatment facility
16 without review of the application under sub. (4) for diagnosis and evaluation or for
17 dental, medical, or psychiatric services for a period not to exceed 12 days. The
18 application for short-term admission of a minor shall be executed by the minor's
19 parent or guardian, and, if the minor is 14 years of age or older and is being admitted
20 for the primary purpose of diagnosis, evaluation, or services for ~~mental illness or~~
21 ~~developmental disability,~~ by the minor. A minor may not be readmitted to an
22 inpatient treatment facility for psychiatric services under this paragraph within 120
23 days of a previous admission under this paragraph.

24 **SECTION 15.** 51.13 (7) (title) of the statutes is amended to read:

25 51.13 (7) (title) DISCHARGE OR CONTINUED APPROPRIATENESS OF ADMISSION.

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SECTION 16

RESTORE TO PLAIN TEXT ✓
SECTION 16. 51.13 (7) (a) of the statutes is amended to read:

51.13 (7) (a) If a minor is admitted to an inpatient treatment facility while under 14 years of age, and if upon reaching age 14 is in need of further inpatient care and treatment primarily for ~~mental illness~~ ^{alcoholism, or drug abuse} or developmental disability, the director of the facility shall request the minor and the minor's parent or guardian to execute an application for voluntary admission. Such an application may be executed within 30 days prior to a minor's 14th birthday. If the application is executed, a petition for review shall be filed in the manner prescribed in sub. (4), unless such a review has been held within the last 120 days. If the application is not executed by the time of the minor's 14th birthday, the minor shall be discharged unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement by the end of the next day in which the court transacts business.

SECTION 17. 51.13 (7) (b) of the statutes is amended to read:

51.13 (7) (b) ⁽¹⁾ Any minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for ~~mental illness or developmental disability~~, and any minor who is voluntarily admitted under sub. (1)

~~(c) 1. or 2., may request discharge in writing. In the case of a minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years of age who is voluntarily admitted under this section for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse~~ ^{2. For} For all other

~~minors who are voluntarily admitted under this section~~, the parent or guardian of the minor may make the request. Upon receipt of any form of written request for discharge from a minor ~~who is voluntarily admitted under this section for the~~

discharge in writing

RESTORE
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TEXT

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SECTION 17

Specified under subd. 1. or 3.

1 ~~primary purpose of treatment for developmental disability or who is voluntarily~~

2 ~~admitted under sub. (1) (c) 1.~~, the director of the facility in which the minor is

3 admitted shall immediately notify the minor's parent or guardian, if available. The

4 *INSERT 11-4* minor shall be discharged within 48 hours after submission of the request, exclusive

5 of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for

6 emergency detention, emergency commitment, involuntary commitment, or

7 protective placement.

, other than a minor to which par. (b) 1. applies,

INSERT 11-7 8 ~~SECTION 18.~~ 51.13 (7) (c) of the statutes is amended to read:

9 51.13 (7) (c) Any minor ~~14 years of age or older~~ who is voluntarily admitted

10 under this section ~~for the primary purpose of treatment for alcoholism or drug abuse,~~

11 ~~and who is not discharged under par. (b), and any minor under 14 years of age who~~

12 ~~is voluntarily admitted under this section for the primary purpose of treatment for~~

13 ~~mental illness, developmental disability, alcoholism, or drug abuse, and~~ who is not

14 discharged under par. (b); may submit a written request to the court for a hearing

15 to determine the continued appropriateness of the admission. If the director or staff

16 of the inpatient treatment facility to which a minor described in this paragraph is

17 admitted observes conduct by the minor that demonstrates an unwillingness to

18 remain at the facility, including ~~but not limited to~~ a written expression of opinion or

19 unauthorized absence, the director shall file a written request with the court to

20 determine the continued appropriateness of the admission. A request that is made

21 personally by a minor under this paragraph shall be signed by the minor but need

22 not be written or composed by the minor. A request for a hearing under this

23 paragraph that is received by staff or the director of the facility in which the ~~child~~

24 minor is admitted shall be filed with the court by the director. The court shall order

25 a hearing upon request if no hearing concerning the minor's admission has been held

SENATE BILL 387

SECTION 18

1 within 120 days ~~after~~ before receipt of the request. The court shall appoint counsel
2 and, if the court considers it necessary, a guardian ad litem to represent the minor
3 ~~and if.~~ If a hearing is held, the court shall hold the hearing within 14 days after
4 receipt of the request, unless the parties agree to a longer period. After the hearing,
5 the court shall ~~make disposition~~ dispose of the matter in the manner provided in sub.
6 (4).

7 **SECTION 19.** 51.14 (3) (a) of the statutes is amended to read:

8 51.14 (3) (a) ~~Either a~~ A minor 14 years of age or older ~~or his or her parent or~~
9 ~~guardian, other than a minor who is voluntarily admitted under s. 51.13 (1) (c).~~
10 may petition the mental health review officer in the county in which the parent or
11 guardian has residence for a review of a refusal ^{of either the minor or his or her}
12 parent or guardian to provide the informed consent for outpatient mental health
13 treatment required under s. 51.61 (6). The parent or guardian of a minor 14 years
14 of age or older who is voluntarily admitted under this section for the primary purpose
15 of treatment for developmental disability may petition the mental health review
16 officer in the county in which the parent or guardian has residence for a review of a
17 refusal of the minor to provide the informed consent for outpatient mental health
18 treatment required under s. 51.61 (6).

19 **SECTION 20.** 51.20 (16) (a) of the statutes is amended to read:

20 51.20 (16) (a) ~~Except in the case of alcoholic commitments for a commitment~~
21 ~~under s. 51.45 (13) and except for a minor other than a minor committed for~~
22 ~~treatment of developmental disability,~~ any patient who is involuntarily committed
23 for treatment under this chapter, may on the patient's own verified petition, except
24 in the case of a minor who is under 14 years of age, or on the verified petition of the
25 patient's guardian, relative, friend, or any person providing treatment under the

RESTORE TO
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1 order of commitment, request a reexamination or request the court to modify or
2 cancel an order of commitment.

3 **SECTION 21.** 51.30 (5) (a) of the statutes is amended to read:

4 51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person
5 in the place of a parent of a minor or the guardian of an adult adjudged incompetent
6 under ch. 880 may consent to the release of confidential information in court or
7 treatment records. A minor who is aged 14 or more and voluntarily admitted under
8 s. 51.13 (1) (b) for the primary purpose of treatment for developmental disability or
9 voluntarily admitted under s. 51.13 (1) (c) 1. may consent to the release of
10 confidential information in court or treatment records without the consent of the
11 minor's parent, guardian, or person in the place of a parent. Consent under this
12 paragraph must conform to the requirements of sub. (2).

13 **SECTION 22.** 51.30 (5) (b) 1. of the statutes is amended to read:

14 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent
15 under ch. 880 shall have access to the individual's court and treatment records at all
16 times. The parent, guardian, or person in the place of a parent of a developmentally
17 disabled minor shall have access to the minor's court and treatment records at all
18 times except in the case of a minor aged 14 or older who files a written objection to
19 ~~such~~ ^{the} access with the custodian of the records. The parent, guardian, or person in the
20 place of a parent of other minors shall have the same rights of access as ^{are} provided to
21 subject individuals under this section, other than under subd. 2.

22 **SECTION 23.** 51.30 (5) (b) 2. of the statutes is amended to read:

23 51.30 (5) (b) 2. A minor ~~upon reaching the age of~~ who is aged 14 or older and
24 voluntarily admitted under s. 51.13 (1) (b) for the primary purpose of treatment for
25 developmental disability or voluntarily admitted under s. 51.13 (1) (c) 1. shall have

SENATE BILL 387**SECTION 23**

1 access to his or her own court and treatment records, as provided in this section. ~~A~~
2 ~~minor under the age of 14~~ All other minors shall have access to court records but only
3 in the presence of parent, guardian, counsel, guardian ad litem, or judge and shall
4 have access to treatment records as provided in this section but only in the presence
5 of parent, guardian, counsel, guardian ad litem, or staff member of the treatment
6 facility.

7 **SECTION 24.** 51.35 (3) (a) of the statutes is amended to read:

8 51.35 (3) (a) A licensed psychologist of a secured correctional facility, a secured
9 child caring institution, or a secured group home, or a licensed physician of the
10 department of corrections, who has reason to believe that any individual confined in
11 the secured correctional facility, secured child caring institution, or secured group
12 home is, in his or her opinion, in need of services for developmental disability,
13 alcoholism, or drug dependency or in need of psychiatric services, and who has
14 obtained voluntary consent to make a transfer for treatment, shall make a report,
15 in writing, to the superintendent of the secured correctional facility, secured child
16 caring institution, or secured group home, stating the nature and basis of the belief
17 and verifying the consent. In the case of a minor age 14 or older who is in need of
18 services for developmental disability ~~or who is in need of psychiatric services~~, the
19 minor and the minor's parent or guardian shall consent unless the minor is admitted
20 under s. 51.13 (1) (c) 1. In the case of a minor age 14 or older who is in need of
21 psychiatric services or services for alcoholism or drug dependency or a minor under
22 the age of 14 who is in need of services for developmental disability, alcoholism, or
23 drug dependency or in need of psychiatric services, only the minor's parent or
24 guardian need consent unless the minor is admitted under s. 51.13 (1) (c). The
25 superintendent shall inform, orally and in writing, the minor and the minor's parent

SENATE BILL 387

1 or guardian, that transfer is being considered and shall inform them of the basis for
2 the request and their rights as provided in s. 51.13 (3). If the department of
3 corrections, upon review of a request for transfer, determines that transfer is
4 appropriate, that department shall immediately notify the department of health and
5 family services and, if the department of health and family services consents, the
6 department of corrections may immediately transfer the individual. The
7 department of health and family services shall file a petition under s. 51.13 (4) (a)
8 in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county
9 where the treatment facility is located.

10 **SECTION 25.** 51.35 (3) (b) of the statutes is amended to read:

11 51.35 (3) (b) The court assigned to exercise jurisdiction under chs. 48 and 938
12 shall determine, based on the allegations of the petition and accompanying
13 documents, whether the transfer of the minor to an inpatient facility is appropriate
14 and consistent with the needs of the minor and, if the minor is 14 years of age or older
15 and is being transferred for the purpose of receiving services for developmental
16 disability or psychiatric services, whether the transfer is voluntary on the part of the
17 minor. If the court is unable to make those determinations based on the petition and
18 accompanying documents, the court may order additional information to be
19 produced as necessary to make those determinations within 14 days after admission,
20 or the court may hold a hearing within 14 days after admission. If a notation of the
21 minor's unwillingness appears on the face of the petition, or if a hearing has been
22 requested by the minor or by the minor's counsel, guardian ad litem, parent, or
23 guardian, the court shall hold a hearing and appoint counsel or a guardian ad litem
24 for the minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court
25 shall approve or disapprove the request for transfer. If the minor is under the

SENATE BILL 387

SECTION 25

1 continuing jurisdiction of the court of another county, the court may order the case
2 transferred together with all appropriate records to that court.

3 **SECTION 26.** 51.35 (3) (g) of the statutes is amended to read:

4 51.35 (3) (g) A minor 14 years of age or older who is transferred to a treatment
5 facility under par. (a) for the purpose of receiving services for developmental
6 disability ~~or psychiatric services~~ may request in writing a return to the secured
7 correctional facility, secured child caring institution, or secured group home. In the
8 case of a minor 14 years of age or older who is transferred to a treatment facility
9 under par. (a) for the purpose of receiving services for alcoholism or drug dependency
10 or psychiatric services or a minor under 14 years of age, who is transferred to a
11 treatment facility under par. (a) for the purpose of receiving services for
12 developmental disability, alcoholism, or drug dependency, or psychiatric services,
13 the parent or guardian may make the request. Upon receipt of a request for return
14 from a minor 14 years of age or older, the director shall immediately notify the
15 minor's parent or guardian. The minor shall be returned to the secured correctional
16 facility, secured child caring institution, or secured group home within 48 hours after
17 submission of the request unless a petition or statement is filed for emergency
18 detention, emergency commitment, involuntary commitment, or protective
19 placement.

20 **SECTION 27.** 51.61 (6) of the statutes is amended to read:

21 51.61 (6) Subject to the rights of patients provided under this chapter, the
22 department, county departments under s. 51.42 or 51.437, and any agency providing
23 services under an agreement with the department or those county departments have
24 the right to use customary and usual treatment techniques and procedures in a
25 reasonable and appropriate manner in the treatment of patients who are receiving

SENATE BILL 387

services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for mental illness, alcoholism, or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for ~~mental illness or~~ developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. INSERT 17-12 A refusal of either a minor 14 years of age or older RESTORE TO PLAIN TEXT or the minor's parent or guardian of a minor 14 years of age or older RESTORE TO PLAIN TEXT to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and a A refusal of either a minor 14 years of age or older or the minor's the parent or guardian of a minor 14 years of age or older, other than a minor voluntarily admitted under s. 51.13 (1) (c) 1., or the refusal of a minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for developmental disability, to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

INSERT 17-21**SECTION 28. Initial applicability.**

(1) This act first applies to ~~individuals who are receiving~~ treatment in an approved inpatient treatment facility, ~~or who are receiving~~ outpatient mental health treatment, on the effective date of this subsection, regardless of whether admission

the receipt of

and to the receipt of

SENATE BILL 387

SECTION 28

1 to the inpatient facility or outpatient program occurred or was sought prior to the
2 effective date of this subsection. ✓

3 **SECTION 29. Effective date.**

4 (1) This act takes effect on the first day of the 2nd month beginning after
5 publication.

6 (END)

D- Note

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1179/?ins

.....

INSERT 6-22

SECTION 1. 51.13 (2) (b) of the statutes is amended to read:

51.13 (2) (b) Notwithstanding par. (a), any minor who is 14 years of age or older and who is admitted to an inpatient treatment facility for the primary purpose of treatment of mental illness or developmental disability, alcoholism, or drug abuse has the right to be discharged within 48 hours after his or her request, as provided in, or as limited by, sub. (7) (b). ~~At the time of admission, any minor who is 14 years of age or older and who is admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability, and the minor's parent or guardian, shall be informed of this right orally and in writing by the director of the hospital or such person's designee.~~ This paragraph does not apply to individuals minors who receive services in hospital emergency rooms.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

INSERT 11-4

not specified in subd. 1., a minor specified in subd. 2. whose parent or guardian requests discharge in writing, and a minor specified in subd. 3. who requests and whose parent or guardian requests discharge in writing

INSERT 11-7

SECTION 2. 51.13 (7) (b) 3. of the statutes is created to read:

51.13 (7) (b) 3. For a minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for mental illness, the minor and the minor's parent or guardian may request discharge in writing. If the parent or guardian of the minor refuses to request discharge and if the director of the facility to which the minor is admitted or his or her designee avers, in writing, that the minor is in need of psychiatric services, that the facility's therapy or treatment is

1 appropriate to the minor's needs, and that inpatient care in the treatment facility is
2 the least restrictive therapy or treatment consistent with the needs of the minor, the
3 minor may not be discharged under this paragraph.

INSERT 17-21

4 **SECTION ~~3~~** 51.61 (6) of the statutes is renumbered 51.61 (6) (intro.) and
5 amended to read:

6 51.61 (6) (intro.) Subject to the rights of patients provided under this chapter,
7 the department, county departments under s. 51.42 or 51.437, and any agency
8 providing services under an agreement with the department or those county
9 departments have the right to use customary and usual treatment techniques and
10 procedures in a reasonable and appropriate manner in the treatment of patients who
11 are receiving services under the mental health system, for the purpose of
12 ameliorating the conditions for which the patients were admitted to the system. The
13 written, informed consent of any patient shall first be obtained, unless the person
14 has been found not competent to refuse medication and treatment under s. 51.61 (1)
15 (g) or the person is a minor 14 years of age or older who is receiving services for
16 alcoholism or drug abuse or a minor under 14 years of age who is receiving services
17 for mental illness, developmental disability, alcoholism, or drug abuse. In the case
18 of a minor, the written, informed consent of the parent or guardian is required, except
19 as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If
20 the minor is 14 years of age or older and is receiving services for mental illness or
21 developmental disability, the written, informed consent of the minor and the minor's
22 parent or guardian is required. A refusal of either a minor 14 years of age or older
23 or the minor's parent or guardian to provide written, informed consent for admission
24 to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and

1 ~~a refusal of either a minor 14 years of age or older or the minor's parent or guardian~~
2 ~~to provide written, informed consent for outpatient mental health treatment is~~
3 ~~reviewable under s. 51.14. all of the following apply:~~

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4034zl; 2001 a. 104.

5 SECTION ~~4~~ 51.61 (6) (a) of the statutes is created to read:

6 51.61 (6) (a) If the minor is under 14 years of age, for the receipt of services for
7 mental illness, developmental disability, alcoholism, or drug abuse, the written,
8 informed consent of the minor's parent or guardian is required, except for services
9 in an inpatient facility as provided under s. 51.13 (1) (c) 2.

10 SECTION ~~5~~ 51.61 (6) (b) of the statutes is created to read:

11 51.61 (6) (b) If the minor is 14 years of age or older:

12 1. For the receipt of services for developmental disability, the written, informed
13 consent of the minor and the minor's parent or guardian is required, except for
14 services in an inpatient facility as provided under s. 51.13 (1) (c) 1.

15 2. For the receipt of services for alcoholism or drug abuse, the written, informed
16 consent of the minor's parent or guardian is required, except for services in an
17 inpatient facility as provided under s. 51.13 (1) (c) 1.

18 3. For the receipt of treatment, including psychotropic medication, as defined
19 in s. 50.035 (5) (a) 2., for mental illness, the written informed consent of the minor
20 and of the minor's parent or guardian is required, except for all of the following:

21 a. A refusal of the ~~minor or the~~ minor's parent or guardian to provide written,
22 informed consent for inpatient treatment for mental illness is reviewable under s.

23 51.13 (1) (c) 1. and (4) (d).

a refusal of the minor to
provide written, informed consent
for such inpatient treatment is
reviewable under s. 51.13

1

2

3

^b
^b4. A refusal of the minor or the minor's parent or guardian to provide written,
informed consent for outpatient treatment for mental illness is reviewable under s.
51.14 (3) (a) and (4) (g).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1179/P1dn
DAK:kjf:jf

January 18, 2005

To Senator Roessler:

This bill is in preliminary form because there are numerous issues that may need review and resolution. Your request for a redraft of 2003 Senate Bill 387 had several parts. I have dealt with the request as follows:

1. "Specify that any mental health treatment of a minor child must be "medically necessary". I have not added this requirement because I'm not sure what "medically necessary" means in this context (it is undefined in other statutes in which it is used), and because I'm unsure how it should be used in conjunction with the standards for inpatient and outpatient therapy or treatment in current law that require that the therapy or treatment be "appropriate to a minor's needs" (ss. 51.13 (4) (d) and (g) (intro.) and 51.14 (3) (h) 3. and (g) 3., stats., or "consistent with the minor's needs (s. 51.13 (1) (e), stats., for inpatient care) and "least restrictive" (ss. 51.13 (1) (e), (4) (a) 5., (d), and (g) (intro.), and (6) (b) and 51.14 (3) (b) 4. and (h) 3., stats.) Did you want to replace these standards, or is it thought that medical necessity is different from appropriateness or consistency with the minor's needs and the least restrictive treatment?
2. "Allow minors age 14 and older to consent to voluntary outpatient or inpatient treatment and psychotropic drugs. If the minor refuses to consent to such treatment or medication in writing, the minor's parent may consent to the treatment or medication." and "Modify s. 51.13 (4) to provide for a review in the case of an admission that the parent consented to as a result of the minor's refusal of treatment." Under current law, under s. 51.61 (6), stats., the refusal of either a minor aged 14 or older or his or her parent or guardian to consent to inpatient or outpatient treatment is reviewable. (Section 51.61 (6), stats., has a mistake in it in this regard — it refers to review of a minor's refusal under s. 51.13 (1) (c) 1., stats., which instead deals with the situation where a *parent or guardian* refuses or cannot be found or there is no parent with legal custody and a minor wants to be admitted to an inpatient facility.) The review of refusals, by the minor or by the parent or guardian, then, is under s. 51.13 (1) (c) 1. and (4) (d), stats., for inpatient treatment, and under s. 51.14 (3) (h) and (4) (g), stats., for outpatient treatment. I have redone s. 51.61 (6) to structure it in a clearer fashion, fix its current mistake, and more clearly provide for the review of a refusal of either the parent or guardian or the minor for inpatient or outpatient treatment. Okay?

3. "If a minor requests to be discharged under s. 51.13 (7) (b), the parent may consent to continuing the treatment, in which case the minor would not be discharged if the treatment is still medically necessary." I have done this but, again, have used the current standards of appropriateness and least restrictiveness, rather than medical necessity, pending resolution of Drafter's Note #1., above. I also have made an exception to this limitation on the right of discharge for minors who are voluntarily admitted under s. 51.13 (1) (c) 1. or 2. (the parent or guardian refused to execute the application for admission or can't be found or there is no parent with legal custody); I also changed s. 51.13 (2) (b) to refer to s. 51.13 (7) (b), as revised in the bill, for all minors and eliminated provisions about notice that are redundant to s. 51.13 (3), stats.

4. "Delete SEC. 21 of the bill to retain current law relating to consent to release records." I have done this. Did you also want for me to delete SECTION 23 (the amendment to s. 51.30 (5) (b) 2.)? At this point, I have reworded it, but only to clarify current law.

In addition, I have added reference to alcoholism and drug abuse to s. 51.13 (7) (a), stats.; these seemed to have been omitted inadvertently, since the paragraph still provides for emergency commitment, which is used under s. 51.45 only for alcoholism. I also changed ss. 51.14 (3) (a), 51.20 (16) (a), and 51.30 (5) (b) 2., stats., from the way in which they had been amended in 2003 Senate Bill 387. Please review.

I would be happy to provide you with any further assistance you need with respect to this draft.

Debora A. Kennedy

Managing Attorney

Phone: (608) 266-0137

E-mail: debora.kennedy@legis.state.wi.us

1/25/05 Carol Roessler.

✓ ① Check 51.13 (DG) - check outpt. + inpatient
re county admissions

✓ ② Fed reqs for drug + alcohol admissions - none

✓ 51.61 (6)(b) 2. - p. 9, ll. 14-16

in conflict 51.47 - allows kids over 12 to
get outpt. trtmt ~~for~~ w/o par. consent - must
notify parent - need to add an
exception

③ Developmental disability - include ~~if~~ same
as minors age 14 + older for trtmt of
m-h.

DN? ✓ ④ 51.13 (7)(a) - change last sentence

✓ ⑤ 51.13 (7)(b) 5 - ok

⑥ For minor aged 14 or older who refuses
to be admitted - parent can admit,
trumping child

Child can consent, but if won't or can't
parent can do so, review should be at
request of child (?) seems unnecessary D-N

✓ DG: ^{should be} automatic review, as is curr. law

in a public facility, even if it's just a
paper review by judge - ~~isn't~~ ~~use~~
use curr. law for public facilities

(DG says formal review, wh/ is allowed, is
rare)

✓ Info. be offered to child at time of admission concerning right of ^{ct.} review or ^{Do assistance from} can contact Wis. Coal for Advocacy
↓
to help w/
, ~~including~~ + may include an independ. eval., as ordered by (51.13(4)) the ct. - GAL appt.

✓ Should apply to both public + private

⑦ Medical necessity - is standard that HMO uses 51.13(1) S.C. - not necess. to draft

✓ Standard for private facilities under 51.13(2) to be same standard for 51.13(1)

⑧ Admission v. ^{day treatment} outpatient treatment - ~~use child provided~~
DAR: clarify in other statutes?

~~Parents~~

✓ Medication - ~~allow minors to~~ See 02 of the 12/08 drafting instructions -

↓
~~Do. If child consents, parent doesn't have~~
Imp: Parent always consents (w/pt.); Kid can consent
If Child ¹⁴⁻¹⁸ wants to consent, but parent refuses, can have review

✓ 51.14(1) Refers to outpt as treatment other than w/pt.

7
DAR: make at 51.161

51.48

Clarify child ¹⁴⁻¹⁸ can consent to outpt. treatment w/parent

51.14(3)(a)?

List of changes to LRB 1179/P1 developed by Mental Health Work Group
January 25, 2005
330 SW, State Capitol

Attendees: Rodney Miler; Dianne Greenley; Dr. Anthony Meyer; Kristen Esbensen; John Pellmann; Mary Pellmann; Mark Quam (via speakerphone); Dr. Ken Herrmann; Dr. Martha Rolli; Ron Hermes; Jennifer Stegall; Jolene Churchill; Rep. Gundrum; Senator Roessler; Debora Kennedy; Jennifer Stegall; Laura Rose; Senator Roessler

- **Minor's consent to their own treatment:** Permit minors age 14 and older to consent on their own to inpatient and outpatient mental health treatment (outpatient mental health treatment will be defined as "any treatment other than inpatient treatment). However, if a minor refuses to consent to treatment, permit the parent to consent to this treatment on behalf of the minor. — See later e-mail
- **Review process when parent refuses to consent:** Permit the minor to petition the juvenile court for review of a parental refusal to consent to the minor's request for inpatient or outpatient mental health treatment. When information on this review process is given to the minor, also notify the minor that the Wisconsin Coalition for Advocacy is available to assist the minor in petitioning for review. ^{minor}
- **Psychotropic medication:** Parent of minor age 14 and older must consent to administration of psychotropic medication in all cases. Minors would not be permitted to consent to administration of psychotropic medication on their own. Make review process described in bullet point above available in cases where the minor wants psychotropic meds but the parent won't consent.
- ✓ • **Independent evaluation:** Provide that, as part of the review process, that there is an ability to get an independent evaluation if ordered by the court.
- ✓ • **Applicable to public and private admissions:** All of the above provisions, as well as other provisions of the draft, should apply both to public and private admissions.

Laura Rose
Leg. Council
1.25.05

Laura Agreed: → Dev. disab. to be treated same as m.i.

From Rod Miller: Psychotropic medication may be admin. on an outpt. or inpt. basis

Kennedy, Debora

From: Stegall, Jennifer
Sent: Monday, February 14, 2005 11:29 AM
To: Kennedy, Debora
Cc: Rose, Laura
Subject: Mental Health Treatment Draft

Hi Debora,

Thanks for the call today. I talked to Laura Rose and we both have in our notes a reference to allowing a minor to consent to treatment without parental consent. However, I am not sure that means we allow a minor to seek treatment without his or her parents at least being asked to consent. I have a call into Dianne Greenley (WI. Coalition for Advocacy). She is out of the office until Wednesday. I also have a call into Dr. Rolli (Psychiatrist at UW Hospital). She will likely get back to me before the end of the day. I think Senator Roessler would like to keep the parents involved.

I will get back to you as soon as I have a better idea of what the Senator would like to do.

Thank you!

Jennifer

Kennedy, Debora

From: Stegall, Jennifer
Sent: Monday, February 14, 2005 5:34 PM
To: Rose, Laura
Cc: Kennedy, Debora
Subject: Mental Health Bill

Laura,

Here is what Dr. Rolli and Kris Esbensen had to say:

Dr. Rolli, Psychiatrist, UW Hospital

- Allowing the child to receive treatment without parental consent presents a situation where the parent would be obligated to pay for something they are not in agreement with for their child. Insurance companies will not likely pay for treatment without the parent's consent.
- Not sure if we should change current law.
- Does want to see minors get treatment.
- Suggested I call Kris Esbensen, Mental Health Center of Dane County. Kris works with minors who have parents that may not be the most responsible.

Kris Esbenson, Mental Health Center of Dane County

- Ideally would like to see treatment started right away when a minor seeks it. If there are any objections to treatment, have concerns reviewed through some type appeal process, after treatment begins.
- Waiting to treat a really psychotic kid can result in that person having permanent loss of brain function.
- Having absent parents is a problem and prevents minors from getting treatment.

I just had a chance to talk to Carol and she thinks we should maintain current law as it relates to parental consent. Prior to talking to Carol I told Kris I would follow up with Ken (his last name escapes me and I have Word shut down already). I will still do this but it looks like we will likely stick with current law. This still allows a minor to receive treatment without parental consent; granted, the minor would need to petition the court first. I think changing current law on that issue will cause opposition in the Legislature that may not be there if we leave it alone.

I hope this makes sense...we can talk more tomorrow.

Thanks!
Jennifer